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09/678,692	10/03/2000	Lee Codel Lawson Tarbotton	NAIIP160/00.110.01	6816

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EXAMINER

BURGESS, BARBARA N

ART UNIT PAPER NUMBER

2157

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/678,692

Applicant(s)

TARBOTTON ET AL.

Examiner

Barbara N Burgess

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above claim(s) 3,4,24,25,45 and 46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2, 5-23, 26-44, 47-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This Office Action is in response to Amendments filed October 21, 2004. Claims 3-4, 24-25, and 45-46 have been cancelled as requested by Applicants. Claims 1-2, 5-23, 26-44, 47-63 are presented for further examination.

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 5-23, 26-44, 47-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gampper et al. (hereinafter "Gampper", 6,003,082) in view of Birdwell et al. (hereinafter "Birdwell", 6,002,852).

As per claims 1, 16, 19, 22, 37, 40, 43, 58, 61, Gampper discloses a method of distributing a computer file from a source computer to a plurality of target computers via a computer network, said method comprising the steps of:

- Determining a demand level upon said source computer for downloading of said computer file to said plurality of target computers (column 2, lines 25-27, 37-40, column 3, lines 57-59, column 4, lines 2-11, column 7, lines 14-16, column 8, lines 40-65);
- Sending at least one download controlling message from said source computer to at least one of said plurality of target computers, the download controlling message

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including at least one download qualifying parameter, wherein said at least one download qualifying parameter is adjusted such that a probability that a particular target computer will qualify to download said computer file on the basis of said at least one download qualifying parameter increases as time progresses, wherein a number of target computers not having said computer file decreases as time progresses (column 2, lines 58-60, column 7, lines 14-26, column 8, lines 24-27, 50-58, column 10, lines 18-19, 37-40, 50-52);

- Controlling downloading of said computer file by said at least one of said plurality of target computers in dependence upon said download controlling message (column 2, lines 48-55, column 9, lines 30-45, column 10, lines 27-37, 43-48, column 11, lines 30-35, column 13, lines 21-28, 35-37);
- Adjusting said downloading controlling message in dependence upon said demand level (column 10, lines 18-19, 37-40, 50-52, column 13, lines 14-20).

Gampper does not explicitly disclose:

- Wherein said download controlling message is sent from said source computer to said target computers, in order to control the manner in which said target computers request said downloading of said computer file (column 2, lines 58-60, column 10, lines 18-19, 37-40, 50-52).

However, the use and advantages for the download controlling message sent from said source computer to said target computer in order to control the manner in which target computers request said downloading of said computer file is well known to one skilled in

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the relevant art at the time the invention was made as evidenced by Birdwell (column 3, lines 34-46, column 5, lines 11-25. column 6, lines 4-16).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate the download controlling message sent from said source computer to said target computer in order to control the manner in which target computers request said downloading of said computer file in Gamper's method in order for only those clients that are assigned to the new address can then register to receive data from the server.

As per claims 2, 17, 20, 23, 38, 41, 44, 59, 62, Gampper discloses wherein said download controlling message includes a broadcast message, said method comprising steps of:

- The download controlling message sent from said source computer to said target computer in order to control the manner in which target computers request said downloading of said computer file.

Gampper does not explicitly discloses:

- Issuing said broadcasting message from said source computer to said plurality of target computers indicating availability of said computer file for download from said source computer, said broadcast message including at least one download qualifying parameter;
- Receiving said broadcast message at said plurality of target computer;

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- Determining for each target computer of said plurality of target computers that received said broadcast message whether or not said target computer already has said computer file;
- Determining for each target computer that does not already have said computer file in dependence upon said at least one download qualifying parameter whether or not said target computer qualifies to download said computer file in response to said broadcast message;
- Monitoring how many target computers download said computer file in response to said broadcast message;
- Adjusting at least one download parameter used in a following broadcast message issued by said source computer in dependence upon how many target computers downloaded said computer file in response to said broadcast message.

However, in an analogous art, Birdwell discloses a method and system for opportunistic broadcasting of data that is to be downloaded from a server computer system to client computer systems. The server receives a list of clients that are to receive the data as well as, the server tracks all those identified clients that have not yet confirmed receipt of the download data. Each transmission through the broadcast mechanisms includes information that identifies the client computer systems that are to receive the download data. The broadcast mechanism enters the client identifications of those client computer systems that are to receive the download data. Client computer system may be powered off at the time of the broadcast. The server tracks all those identified clients that have not yet confirmed receipt. If the cost of transmitting through the broadcast

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mechanism is high and only two clients are to receive the data, then transmission through point-to-point connection may be selected (column 3, lines 35-40, 47-60, column 4, lines 1-18, column 5, lines 11-20, column 6, lines 5-10).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate issuing said broadcasting message from said source computer to said plurality of target computers, receiving said broadcast message at said plurality of target computer, determining for each target computer of said plurality of target computers that received said broadcast message whether or not said target computer already has said computer file, determining for each target computer that does not already have said computer file in dependence upon said at least one download qualifying parameter whether or not said target computer qualifies to download said computer file, monitoring how many target computers download said computer file, adjusting at least one download parameter used in a following broadcast message issued by said source computer in dependence upon how many target computers downloaded said computer file in Gampper's method in order for the server to determine whether to transmit the data through point-to-point connection or through the broadcast mechanism.

As per claims 3, 24, 45, Gampper discloses wherein said at least one download qualifying parameter is adjusted such that a probability that a particular target computer will qualify to download said computer file on the basis of said at least one download

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qualifying parameter increases as time progresses (column 8, lines 40-41, 55-60, column 9, lines 32-35, 49-55, column 10, lines 44-53, column 13, lines 14-30).

As per claims 4, 25, 46, Gampper discloses wherein a number of target computers not having said computer file decreases as time progresses (column 10, lines 18-19, 37-40, 50-52, column 13, lines 14-20).

As per claims 5, 26, 47, Gampper discloses wherein said at least one download qualifying parameter is adjusted such that a number of target computers downloading said computer file in response to said broadcast message does not exceed a threshold level (column 2, lines 39-45, column 8, lines 27-47, column 10, lines 59-63).

As per claims 6, 27, 48, Gampper discloses wherein each target computer has a priority level parameter indicating a position within a priority hierarchy and said at least one download qualifying parameter specifies which priority level parameters a target computer must have to qualify to download said computer file (column 2, lines 25-27, 37-40, column 3, lines 57-59, column 4, lines 2-11, column 7, lines 14-16, column 8, lines 40-65).

As per claims 7, 28, 49, Gampper discloses wherein said at least one download qualifying parameter includes a random selection control parameter used in combination with a quasi-random parameter generated by a particular target computers

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to control whether or not said particular target computer qualifies to download said computer file (column 2, lines 39-45, column 8, lines 27-47, column 10, lines 59-63).

As per claims 8, 29, 50, Gampper discloses wherein said broadcast message includes time range data specifying a range of times within which target computers qualifying to download said computer file in response to said broadcast message should download said computer file (column 10, lines 18-19, 37-40, 50-52, column 13, lines 14-20).

As per claims 9, 30, 51, Gampper discloses wherein each target computer that qualifies to download said target file in response to said broadcast message initiates downloading at a time quasi-randomly selected within said range of time (column 10, lines 18-19, 37-40, 50-52, column 13, lines 14-20).

As per claims 10, 31, 52, Gampper discloses wherein said broadcast message includes a network address of said source computer (column 6, lines 26-36).

As per claims 11, 32, 53, Gampper discloses wherein a target computer that has downloaded said computer file subsequently acts as a source computer (column 2, lines 25-27, 37-40, column 3, lines 57-59, column 4, lines 2-11, column 7, lines 14-16, column 8, lines 40-65).

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As per claims 12, 33, 54, Gampper discloses wherein upon receipt of said computer file said target computer issues prompts seeking user input specifying how said computer file should be used (column 6, lines 26-40, column 7, lines 42-50).

As per claims 13, 34, 55, Gampper discloses wherein said computer file is a virus definition data file for use by an ant-virus computer program (column 6, lines 26-40, column 7, lines 42-50).

As per claims 14, 35, 56, Gampper discloses wherein at least portions of said computer network comprises internet networks links (column 1, lines 14-40, column 2, lines 25-35).

As per claims 15, 18, 21, 36, 39, 42, 57, 60, 63, Gampper discloses wherein download controlling message includes a retry message, said method comprising the steps of:

- Sending a download request from one of said plurality of target computers to said source computer, said download request including information identifying said one of said plurality of target computers (column 2, lines 25-27, 37-40, column 3, lines 57-59, column 4, lines 2-11, column 7, lines 14-16, column 8, lines 40-65);
- Receiving at said source computer said download request from said one of said plurality of target computers (column 2, lines 32-35, column 6, lines 5-10, 37-40, column 9, lines 62-65);

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- If said demand level is less than a predetermined threshold level, then sending said computer file from said source computer to said one of said plurality of target computers (column 10, lines 18-19, 37-40, 50-52, column 13, lines 14-20);
- If said demand level is greater than a predetermined threshold level, then sending said retry message to said one of said plurality of target computers indicating a delay period after which said one of said plurality of target computers may reissue said download request to said source computer (column 2, lines 48-55, column 9, lines 30-45, column 10, lines 27-37, 43-48);
- Upon expiry of said delay period reissuing said download request from said one of said plurality of target computers to said source computer (column 10, lines 18-19, 37-40, 50-52, column 13, lines 14-20).

### ***Response to Arguments***

**The Office notes the following arguments:**

(a) There is simply no disclosure, teaching, or even suggestion of any sort of “download controlling message including at least one download qualifying parameter, wherein said at least one download qualifying parameter is adjusted such that a probability that a particular target computer will qualify to download said computer file on the basis of said at least one download qualifying parameter increases as time progresses, wherein a number of target computers not having said computer file decreases as time progresses” (emphasis added).

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(b) Gampper makes absolutely no suggestion of downloading qualifying parameter adjustment that involves such threshold which governs the number of target computers downloading the computer file.

(c) Gampper makes no suggestion of sending a retry message to a target computer indicating a delay period after which the target computer may reissue a download request to the source computer, and, upon expiry of the delay period, the download request being reissued from the target computer.

3. Applicant's arguments filed have been fully considered but they are not persuasive.

**In response to:**

(a) Gampper discloses sending an advisory message to the requesting terminal notifying the user of the delay (column 10, lines 38-41). The delay, itself, is a "download qualifying parameter". Gampper discloses many "download qualifying parameters" that may affect whether a computer is able to download a file. For example, Gampper discloses priority level, server delays, prohibited access times, prohibited downloads, server busyness, size of download, type of download, etc. (column 7, lines 14-30, column 8, lines 24-36, 50-59). So, a computer may not "qualify" to download a file because of these parameters. Explicitly, Gampper discloses the advisory message (downloading controlling message) notifies the user of the delay... server delay, which is a "downloading qualifying parameter".

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The claim further states "wherein said at least one download qualifying parameter is adjusted such that a probability that a particular target computer will qualify to download said computer file on the basis of said at least one download qualifying parameter increases as time progresses, wherein a number of target computers not having said computer file decreases as time progresses". Gampper discloses that the server may adjust the minimum required user priority for completing a download depending upon its busyness, the priority of other users, and other factors (column 8, lines 50-59).

Therefore, Gampper does disclose a "download qualifying parameter is adjusted such that a probability that a particular target computer will qualify to download said computer file". As well, Gampper discloses computer submitting a request for a download at 10:30 am. The server analyzes the request based on the above stated parameters.

The request is not granted at that time because the download size of the request is larger than 20Mb, which is prohibited from 9:00 am – 11:00 am. The request is given a wait period. However, as time progresses, when the request is later evaluated after 11:05, it meets all applicable criteria, and is permitted to download (column 11, lines 30-35, column 13, lines 20-37). Because the computer is permitted to download, that is one less computer that is in need of that download. Again, Gampper discloses wherein said at least one download qualifying parameter is adjusted such that a probability that a particular target computer will qualify to download said computer file on the basis of said at least one download qualifying parameter increases as time progresses, wherein a number of target computers not having said computer file decreases as time progresses.

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(b) Gampper discloses "the download size is a request larger than 20Mb, which is prohibited during 9:00-11:00am". 20Mb represents a threshold value that cannot be exceeded, as well as the time 9:00-11:00 am (column 13, lines 21-25). Therefore, Gampper indeed discloses a downloading qualifying parameter adjustment that involves such threshold which governs the number of target computers downloading the computer file.

(c) Gampper discloses sending an advisory message indicating the delay. A wait time is also established. Once the time expires, the request is submitted again for download (column 10, lines 35-41, column 13, lines 20-37). Therefore, Gampper does disclose sending a retry message to a target computer indicating a delay period after which the target computer may reissue a download request to the source computer, and, upon expiry of the delay period, the download request being reissued from the target computer.

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara N Burgess whose telephone number is (571) 272-3996. The examiner can normally be reached on M-F (8:00am-4:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Barbara N Burgess  
Examiner  
Art Unit 2157

September 29, 2004



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